

Court of Appeals, State of Michigan

ORDER

People of MI v Lavagas Drain

Docket No. 306118

LC No. 10-005864-FH

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Christopher M. Murray
Judges

In lieu of granting the application for delayed appeal, the Court orders, pursuant to MCR 7.205(D)(2), that the September 21, 2010, judgment of sentence of the Wayne Circuit Court hereby is VACATED. The life sentence cannot stand given the trial court's failure to connect the reasons given for the departure to the extent of the departure. *People v Smith*, 482 Mich 292, 318; 754 NW2d 284 (2008). The case is REMANDED for resentencing. If, on resentencing, the trial court imposes a sentence that constitutes a departure, the trial court must explain why the reasons it articulated for the sentence justify the particular departure. *Id.* The proportionality of a departure is appropriately justified by comparing it to the sentencing grid. *Id.* The trial court should articulate why the reasons supporting a departure are similar to conduct that would result in a sentence within the guidelines of the same length as the departure sentence. *Id.* The case is REMANDED to the circuit court for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

APR 13 2012

Date

Larry S. Royster
Chief Clerk